

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GARY B.; JESSIE K., a minor, by)	Civil Action No.: 16-CV-13292
Yvette K., guardian ad litem;)	
CRISTOPHER R. and ISAIAS R.,)	
minors, by Escarle R., guardian ad litem;)	
ESMERALDA V., a minor, by Laura V.,)	CLASS ACTION
guardian ad litem; PAUL M.; JAIME R.,)	
a minor, by Karen R., guardian ad litem,)	
on behalf of themselves and all others)	EX PARTE PETITION FOR
similarly situated,)	APPOINTMENT OF
Plaintiffs,)	GUARDIAN AD LITEM FOR
)	PLAINTIFF ISAIAS R.
v.)	
)	
RICHARD D. SNYDER, in his official)	
capacity as Governor of the State of)	
Michigan; JOHN C. AUSTIN,)	
MICHELLE FECTEAU, LUPE)	
RAMOS-MONTIGNY, PAMELA)	
PUGH; KATHLEEN N. STRAUS,)	
CASANDRA E. ULBRICH, EILEEN)	
WEISER, and RICHARD ZEILE, in)	
their official capacities as members of)	
the Michigan Board of Education;)	
BRIAN J. WHISTON, in his official)	
capacity as Superintendent of Public)	
Instruction for the State of Michigan;)	
DAVID B. BEHEN, in his official)	
capacity as Director of the Michigan)	
Department of Technology,)	
Management, and Budget; and)	
NATASHA BAKER, in her official)	
capacity as the State School)	
Reform/Redesign Officer,)	
)	
Defendants.)	

**EX PARTE PETITION FOR APPOINTMENT OF
GUARDIAN AD LITEM FOR PLAINTIFF ISAIAS R.**

INTRODUCTION

Plaintiff Isaias R.¹ (“Plaintiff”) requests that the Court appoint Escarle R. as Plaintiff’s guardian ad litem for the purposes of this lawsuit. Plaintiff brings this lawsuit because Defendants and the State of Michigan have completely failed to provide Plaintiffs and the class they seek to represent with the most basic right of access to literacy, functionally excluding Plaintiffs and the class from the State’s system of public education. The State of Michigan’s failure to take measures necessary to prevent and correct the deplorable conditions in Detroit schools has denied and will deny Plaintiff the opportunity to fully participate in civic, political, and economic life.

Isaias R. is 12 years old. Declaration of Isaias R. ¶ 2. Because Isaias R. is a minor, he requires assistance to proceed with this suit.

¹ Plaintiffs are redacting Plaintiffs’ names and birthdates pursuant to Federal Rule of Civil Procedure 5.2(a). In addition, Plaintiffs are concurrently filing under separate cover an ex parte motion to proceed under pseudonyms for the Plaintiffs and the proposed guardians ad litem. The proposed pseudonyms are used herein throughout.

ARGUMENT

Because of Isaias R.'s status, Isaias R. requests that the Court appoint Escarle R. as his guardian ad litem for the purposes of this lawsuit. Escarle R. will represent Isaias R.'s interests in these proceedings.

I. Legal Standard

Rule 17(c) of the Federal Rules of Civil Procedure requires a court to take whatever measures it deems proper to protect a minor during litigation, including appointing a guardian ad litem to protect a minor who does not have a duly appointed representative. Fed. R. Civ. P. 17(c). A person's capacity to sue in federal court as an individual depends on the law of the person's domicile and/or where the court is located. Fed. R. Civ. P. 17(b). *See also Dwayne B. v. Granholm, et al.*, 2007 WL 1140920, at *2 (E.D. Mich. Apr. 17, 2007). Since Isaias R. resides in Michigan and this Court is located in Michigan, Michigan law applies.

Under Michigan law, an individual under the age of eighteen is a minor. MCL 722.1(a). Where, as here, a minor is a party, Michigan law requires the appointment of a guardian ad litem to represent the interests of the minor. The Court may appoint as a guardian a person who has an interest in the welfare of the incompetent person involved in the proceedings. *See* MCL 700.5212.

Moreover, the duties of a guardian ad litem differ from that of an attorney, making it appropriate to appoint a guardian ad litem even when the incompetent party is represented by counsel. *See Noe v. True*, 507 F.2d 9, 11-12 (6th Cir. 1974). Duties particular to the guardian ad litem include directing the litigation, and assisting the court to secure a just, speedy, and inexpensive determination of the action. *Id.* (citations omitted).

II. Appointment of Escarle R. as Guardian Ad Litem

In this case, Escarle R. more than meets the requirements to be appointed guardian ad litem for Plaintiff Isaias R. Escarle R. is Isaias R.'s mother, with whom he currently resides. *See Declaration of Escarle R.* ¶ 3.

Escarle R. has a strong interest in Isaias R.'s welfare. Due to Isaias R.'s status as a minor, he is unable to represent himself in legal proceedings. Isaias R. will continue to be harmed if he is further denied the legally required services he needs to have meaningful access to literacy and a public education.

This action seeks to end unlawful denials of Plaintiff's constitutional right of access to literacy, the most basic building block of education. Escarle R. is willing and able to pursue this action on Isaias R.'s behalf, has no conflicts with Isaias R.'s interests, and is acting in good faith. *Declaration of Escarle R.* ¶¶ 2-4. As such, the Court should appoint Escarle R. guardian ad litem to Plaintiff Isaias R. for the purposes of this litigation.

CONCLUSION

Plaintiff Isaias R. respectfully requests that Escarle R. be appointed guardian ad litem to represent Plaintiff Isaias R.'s best interests in this litigation and that Plaintiff's *Ex Parte* Petition for Appointment of Guardian ad Litem be granted.

Respectfully submitted,

Dated: September 13, 2016

By: s/ Jennifer M. Wheeler
JENNIFER M. WHEELER

CARTER G. PHILLIPS (*admission pending*)
SCOTT R. LASSAR (*admission pending*)
TACY F. FLINT (*admission pending*)
JENNIFER M. WHEELER (#6316898)
One South Dearborn Street, #900
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
cphillips@sidley.com
slassar@sidley.com
tflint@sidley.com
jwheeler@sidley.com

MARK D. ROSENBAUM (*admission pending*)
KATHRYN A. EIDMANN (*admission pending*)
ALISA L. HARTZ (*admission pending*)
ANNE M. HUDSON-PRICE (*admission pending*)
610 South Ardmore Avenue
Los Angeles, California 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089
mrosenbaum@publiccounsel.org
keidmann@publiccounsel.org
ahartz@publiccounsel.org
aprince@publiccounsel.org

MICHAEL C. KELLEY (*admission pending*)
MARK E. HADDAD (*admission pending*)
JOSHUA E. ANDERSON (*admission pending*)
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600
mkelley@sidley.com
janderson@sidley.com

BRUCE A. MILLER (P17746)
600 West Lafayette Blvd., 4th Floor
Detroit, Michigan 49226
Telephone: (313) 566-4454
Facsimile: (313) 964-4490
brucemiller@millercohen.com

EVAN H. CAMINKER (P65672)
University of Michigan Law School
**for identification purposes only*
625 South State Street
3250 South Hall
Ann Arbor, Michigan 48109
Telephone: (734) 763-5221
caminker@umich.edu

ERWIN CHEMERINSKY(*admission pending*)
University of California, Irvine School of Law
**for identification purposes only*
401 East Peltason Drive
Educ 1095
Irvine, California 92697
Telephone: (949) 824-7722
echemerinsky@law.uci.edu

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

Richard D. Snyder
Governor of the State of Michigan
George Romney Building
111 South Capitol Ave.
P.O. Box 30013
Lansing, MI 48909

John C. Austin
Michelle Fecteau
Lupe Ramos-Montigny
Pamela Pugh
Kathleen N. Straus
Casandra E. Ulbrich
Eileen Weiser
Richard Zeile
Michigan State Board of Education
John A. Hannah Building
608 West Allegan St.
P.O. Box 30008
Lansing, MI 48909

Brian J. Whiston
Superintendent of Public Instruction
Michigan Department of Education
John A. Hannah Building
608 West Allegan St.
P.O. Box 30008
Lansing, MI 48909

David B. Behen
Director,
Michigan Department of Technology,
Management and Budget
Lewis Cass Building, 2nd Floor
320 S. Walnut Street
P.O. Box 30026
Lansing, MI 48933

Natasha Baker
State School Reform/Redesign Officer
George Romney Building
111 South Capitol Avenue
Lansing, MI 48909

Executed this 13th day of September, 2016, in Chicago, Illinois.

s/ Jennifer M. Wheeler
Jennifer M. Wheeler